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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 CR 423 (AJN)

5 MINH QUANG PHAM,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 8, 2016
3:15 p.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the
Southern District of New York

16 SEAN S. BUCKLEY

17 ANNA SKOTKO

SHANE T. STANSBURY

18 Assistant United States Attorneys

19 LAW OFFICES OF BOBBI C. STERNHEIM

Attorneys for Defendant

20 BOBBI C. STERNHEIM

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1 THE DEPUTY CLERK: U.S.A. v. Minh Quang Pham.
2 Parties, please state your name for the record.

3 MR. BUCKLEY: Yes. Good afternoon, your Honor. Sean
4 Buckley, Anna Skotko, and Shane Stansbury for the government.
5 With us at counsel table is Julius Nutter and Brian Czakala
6 from the FBI.

7 MS. STERNHEIM: Good afternoon, Happy New Year, Judge.
8 Bobbi C. Sternheim for Mr. Pham. Also at counsel table is
9 Julian Joslin, who is my litigation paralegal.

10 THE COURT: Good afternoon.

11 Mr. Pham, I've been informed that you wish to plead
12 guilty to Counts Two, Three, and Five of the indictment 12 CR
13 423. Is that correct, sir?

14 THE DEFENDANT: Yes, that's correct.

15 THE COURT: Before I accept your guilty plea, I am
16 going to ask you certain questions so that I can establish to
17 my satisfaction that you wish to plead guilty because you are
18 guilty and not for some other reason, and also to establish
19 that you know what you will be giving up by pleading guilty.

20 If you don't understand any of my questions or you
21 want time to consult with your lawyer at any time for any
22 reason, just let me know. I'll give you as much time as you
23 need. Okay.

24 Because I will ask you questions today, I'm going to
25 place under oath. So I'll ask you to stand and raise your

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1 right hand.

2 (Defendant sworn)

3 THE COURT: Please be seated. Mr. Pham, because you
4 are now under oath, that means that if you answer any of my
5 questions falsely, you may be prosecuted for the separate crime
6 of perjury. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: What is your full name?

9 THE DEFENDANT: Minh Quang Pham.

10 THE COURT: How old are you?

11 THE DEFENDANT: 33.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: University.

14 THE COURT: Where was that?

15 THE DEFENDANT: Ravensbourne College of Design and
16 Communications.

17 THE COURT: That's in the U.K.?

18 THE DEFENDANT: In South London.

19 THE COURT: Have you ever been treated for any mental
20 illness?

21 THE DEFENDANT: No.

22 THE COURT: Are you now or have you recently been
23 under the care of a doctor?

24 THE DEFENDANT: No.

25 THE COURT: How about a psychiatrist?

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1 THE DEFENDANT: No.

2 THE COURT: Have you ever been treated for any type of
3 addiction?

4 THE DEFENDANT: No.

5 THE COURT: Including drug or alcohol addiction?

6 THE DEFENDANT: No.

7 THE COURT: Have you taken any drugs, medicine, pills,
8 or any alcoholic beverages in the past two days?

9 THE DEFENDANT: No.

10 THE COURT: Is your mind clear today?

11 THE DEFENDANT: Yes.

12 THE COURT: You understand what's happening here
13 today?

14 THE DEFENDANT: Yeah.

15 THE COURT: Does either counsel have any doubt as to
16 Mr. Pham's competence to plead at this time?

17 MR. BUCKLEY: None from the government, your Honor.

18 MS. STERNHEIM: No, your Honor.

19 THE COURT: On the basis of Mr. Pham's responses to my
20 questions, my observations of his demeanor here in court, and
21 the representations of counsel, I do find that he is fully
22 competent to enter an informed plea of guilty at this time.

23 Mr. Pham, I want to confirm that you've received a
24 copy of the indictment in this case, the document that contains
25 the charges against you. It is marked at the top 12 CR 423.

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1 Have you received a copy of the indictment, sir?

2 THE DEFENDANT: I have.

3 THE COURT: Have you had you enough of a chance to
4 discuss with your lawyer the charges to which you intend to
5 plead guilty and any possible defenses to those charges?

6 THE DEFENDANT: Yes, I have.

7 THE COURT: Has your lawyer explained to you the
8 consequences of entering a plea of guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you satisfied with your lawyer's
11 representation of you?

12 THE DEFENDANT: Yes, I am.

13 THE COURT: I'm now going to explain certain
14 constitutional rights that you have. These are rights you'll
15 be giving up if you enter a guilty plea. Please listen
16 carefully to everything I'm about to say. Again, if there is
17 anything you don't understand, let me know, and either I or
18 your lawyer will explain the matter more fully.

19 Under the Constitution and laws of the United States,
20 you have a right to plead not guilty to the charges in the
21 indictment. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If you did plead not guilty, you would be
24 entitled to a speedy and public trial by a jury on the charges
25 contained in the indictment. Do you understand that?

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1 THE DEFENDANT: Yeah.

2 THE COURT: At a trial, you would be presumed to be
3 innocent, and the government would be required to prove you
4 guilty by competent evidence beyond a reasonable doubt before
5 you could be found guilty. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: A jury of 12 people would have to agree
8 unanimously that you were guilty, and you would not have to
9 prove that you were innocent if you were to go to trial. Do
10 you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: At that trial, and at every stage of your
13 case, you would be entitled to be represented by a lawyer. If
14 you couldn't afford a lawyer, one would be appointed at public
15 expense, that is free of cost to you, to represent you. Do you
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: During a trial, the witnesses for the
19 government would have to come to court and testify in your
20 presence. Your lawyer could cross-examine the witnesses for
21 the government, object to evidence offered by the government,
22 and offer evidence on your own behalf if you so desired. You
23 would have the right to have subpoenas issued or other process
24 used to compel witnesses to testify in your defense. Do you
25 understand that?

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1 THE DEFENDANT: Yeah.

2 THE COURT: At a trial, although you would have the
3 right to testify if you chose to do so, you would also have the
4 right not to testify. If you decided not to testify, no one,
5 including the jury, could draw any inference or suggestion of
6 guilt from fact that you did not testify. Do you understand
7 that?

8 THE DEFENDANT: Yeah.

9 THE COURT: If you were convicted at a trial, you
10 would have the right to appeal that verdict. Do you understand
11 that?

12 THE DEFENDANT: Yes.

13 THE COURT: Even now, as you're entering this plea,
14 you have the right to change your mind, plead not guilty, and
15 go to trial on the charges contained in this indictment. Do
16 you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: But if you plead guilty, and if I accept
19 your plea, you will give up your right to a trial and the other
20 rights I've just discussed, other than the right to a lawyer
21 which you have regardless of whether or not you plead guilty.
22 But if you plead guilty, there will be no trial, and I'll enter
23 a judgment of guilty, and then at a later date I'll sentence
24 you on the basis of your plea after I've considered a
25 presentence report that will be prepared by the probation

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1 department, and whatever submissions I get from your lawyer,
2 and from the government. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: If you plead guilty, there will be no
5 trial, and no appeal with respect to whether you did or did not
6 commit these crimes. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: If you plead guilty, you will also have to
9 give up your right not to incriminate yourself, because I'll
10 ask you questions today about what you did in order to satisfy
11 myself that you are guilty as charged. You'll have to admit
12 and acknowledge your guilt. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Pham, are you willing to give up your
15 right to a trial and the other rights I've just discussed?

16 THE DEFENDANT: Yes.

17 THE COURT: Turning to the charge against you, you
18 understand that you're charged with the following:

19 In Count Two, you're charged with material support of
20 a foreign terrorist organization; in Count Three, you're
21 charged with participating in a conspiracy to receive
22 military-type training from a foreign terrorist organization;
23 and in Count Five, you are charged with possessing or carrying
24 a firearm in furtherance of a crime of violence.

25 Do you understand that those are the charges against

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1 you that you've indicated you wish to plead guilty to?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Buckley, I will ask you to state the
4 elements of the offenses in question.

5 MR. BUCKLEY: Yes, your Honor. With respect to Count
6 Two of the indictment, at trial the government would have to
7 prove the following elements beyond a reasonable doubt:

8 First, that the defendant provided material support or
9 resources; second, that the defendant provided such support or
10 resources to an officially designated foreign terrorist
11 organization; third, that the defendant acted knowingly in
12 doing so, in that he acted voluntarily and intentionally and
13 not because of mistake or accident, and that he knew that the
14 foreign terrorist organization was either designated as a
15 foreign terrorist organization, or was engaged in terrorist
16 activity, or terrorism; and fourth, that after the conduct
17 required for the offense occurred, the defendant was brought
18 into or found within the United States.

19 With respect to Count Three of the indictment, the
20 government would have to prove the following elements beyond a
21 reasonable doubt:

22 First, the existence of an unlawful agreement among
23 two or more persons to violate the laws of the United States;
24 second, that the defendant knowingly and willfully joined that
25 unlawful agreement with knowledge of its unlawful objective,

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1 and here the unlawful objective alleged is to receive military
2 training from a foreign terrorist organization; and third, that
3 an overt act was committed by either the defendant or a
4 co-conspirator in furtherance of the charged conspiracy.

5 With respect to Count Five of the indictment, at trial
6 the government would have to prove each of the following
7 elements beyond a reasonable doubt:

8 First, that the defendant used, carried, or possessed
9 a firearm; second, that the defendant used or carried a firearm
10 during and in relation to a crime of violence, here the crimes
11 of violence alleged are Counts Two and Three of the indictment,
12 or that the defendant possessed the firearm in furtherance of
13 such crimes; third, that the defendant acted unlawfully,
14 willfully, and knowingly.

15 In addition, with respect to Count Five, in order to
16 trigger the enhanced penalty provisions of Title 18, United
17 States Code, Section 924(c)(1)(B)(ii), the government would
18 also have to show beyond a reasonable doubt that the firearm
19 that the defendant used, possessed, or carried in furtherance
20 of those crimes of violence was a machine gun, which is a
21 firearm that is capable of automatically firing more than one
22 shot without manual reloading by a single function of the
23 trigger.

24 And finally, with respect to each of Counts Two,
25 Three, and Five of the indictment, the government would have to

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1 establish that venue is proper here in the Southern District of
2 New York by a preponderance of the evidence.

3 THE COURT: Thank you.

4 Mr. Pham, did you hear the lawyer for the government
5 state what the elements of the three counts are that you intend
6 to plead guilty?

7 THE DEFENDANT: I did hear.

8 THE COURT: You understand if you were to go to trial,
9 the government would have to prove all of those elements beyond
10 a reasonable doubt?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Now I'm going to talk to you about the
13 possible punishments that you face for these crimes, and I'm
14 going to describe the maximum possible punishments as well as
15 any applicable mandatory minimum punishments. The maximum
16 means the most that could possibly be imposed. It doesn't mean
17 that's what you'll receive, but you do have to understand by
18 pleading guilty you are exposing yourself to the possibility of
19 receiving any combination of punishments up to the maximum that
20 I'm about to describe. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: So first I am going to talk to you about
23 the maximum possible restrictions on your liberty. The maximum
24 term of imprisonment for Count Two is 15 years, which could be
25 followed by up to a lifetime of supervised release. Do you

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1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Just before I go on to the other counts,
4 I'll pause for a moment on that term "supervised release."
5 That means if you were released from prison and in the United
6 States, you would be subject to supervision by the probation
7 department. There would be rules of supervised release that
8 you'd have to follow. And if you were to violate those rules,
9 you could be returned to prison without a jury trial to serve
10 additional time, with no credit for time you served in prison
11 as a result of your sentence, and no credit for any time spent
12 on post-release supervision. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: For clarity, I want to make sure everyone
15 agrees the applicable maximum sentence that applies is the
16 statute in effect at the time of the charged commission, which,
17 as I just indicated here, is 15 years. Correct?

18 MR. BUCKLEY: That's correct, your Honor.

19 THE COURT: For Count Two.

20 MS. STERNHEIM: We agree.

21 THE COURT: Thank you. So, returning to the maximum
22 punishments that you face, Mr. Pham, I've indicated for Count
23 Two it's 15 years, which could be followed by a lifetime of
24 supervised release. For Count Three it's five years, which
25 could be followed by up to three years' supervised release.

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1 You understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: And in Count Five, it is a maximum term of
4 life imprisonment, which could be followed by up to five years'
5 supervised release. Do you understand that?

6 THE DEFENDANT: Yeah.

7 THE COURT: In addition to understanding the maximum
8 punishment that could be imposed, you should understand there
9 are mandatory minimum punishments that attach to the crime that
10 you are pleading guilty to. That means that even if I wanted
11 to, I would not be allowed to sentence you to less than the
12 minimum. And in this case, Count Five carries a mandatory
13 minimum punishment of 30 years' imprisonment. Do you
14 understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: The term of imprisonment imposed on Count
17 Five must be imposed consecutively, that is, after any term of
18 imprisonment that I impose with respect to Counts Two and
19 Three. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: So do you understand it's possible, taking
22 the counts together, that you could be sent to prison for up to
23 a lifetime of imprisonment, with a mandatory minimum term of 30
24 years? Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: In addition to these restrictions on your
2 liberty, the maximum possible punishment also includes certain
3 financial penalties. The maximum allowable fine for Count Two
4 is \$250,000 or twice the gross gain derived from the offense or
5 twice the gross loss to persons other than yourself. It is the
6 same maximum fines for Count Three, as well as for Count Five.
7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: In addition, I can order restitution to
10 any person or entity injured as a result of your criminal
11 conduct. And I can also order you to forfeit all property
12 derived from the offense or used to facilitate the offense. Do
13 you understand that?

14 THE DEFENDANT: Yeah.

15 THE COURT: In your plea agreement with the
16 government, it is indicated that you admit the forfeiture
17 allegation with respect to Counts Two and Three of the
18 indictment, and agree to forfeit to the United States any
19 property which constitutes or is derived from proceeds
20 traceable to the offense, including, but not limited to,
21 \$10,000.

22 Do you admit to this forfeiture allegation?

23 THE DEFENDANT: I do.

24 THE COURT: You agree to forfeit any property that
25 constitutes or is derived from proceeds traceable to the

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1 offense?

2 THE DEFENDANT: I do.

3 THE COURT: Finally, I must also order a mandatory
4 special assessment of \$100 per count.

5 Do you understand what I've just described are the
6 maximum possible financial penalties you face for these crimes?

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. Pham, am I correct that you are not a
9 United States citizen?

10 THE DEFENDANT: That's correct.

11 THE COURT: You understand that because you are not a
12 United States citizen, that your guilty plea and conviction
13 make it very likely that your deportation, properly called
14 removal from the United States, is presumptively mandatory. Do
15 you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you discussed the removal or
18 deportation issues with your attorney?

19 THE DEFENDANT: I have.

20 THE COURT: Further, pursuant to your plea agreement,
21 you've agreed to the entry of a stipulated judicial order of
22 removal. Is that correct?

23 THE DEFENDANT: Sorry. Could you repeat that again?

24 THE COURT: Sure. Pursuant to your plea agreement,
25 you've agreed to the entry of a stipulated order of removal.

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1 THE DEFENDANT: I did, yeah.

2 THE COURT: I think what I'll do, after we discuss the
3 plea agreement in more detail, I'll put the documents in front
4 of you that pertain to the stipulation of order of removal, and
5 make sure that you've had enough time to review those and
6 discuss them with your attorney.

7 But let's first turn to your sentence. I want to make
8 sure that you understand that if your lawyer or anyone else has
9 attempted to predict what your sentence will be, that
10 prediction could be wrong. No one, not your lawyer, not the
11 government's lawyer, no one can give you any assurance of what
12 your sentence will be, since I am going to decide your sentence
13 and I'm not going to do it now. I'm going to wait until I
14 receive the presentence report that will be prepared by the
15 probation department that I mentioned a moment ago, I'll do my
16 own independent calculation of the sentencing guideline range,
17 I'll consider it and any possible departures from it, and
18 determine what a reasonable sentence is for you based on the
19 sentencing factors contained in a statute called 18, U.S.C.,
20 Section 3553(a).

21 Do you understand all that?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you discussed these issues with your
24 lawyer?

25 THE DEFENDANT: We have.

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1 THE COURT: So even if your sentence is different from
2 what your lawyer or anyone else has told you it might be, even
3 if it is different from what you expect or what is contained in
4 a written plea agreement that you've entered into with the
5 government, you'll still be bound by your guilty plea, and
6 you'll not be allowed to withdraw your plea of guilty. Do you
7 understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: I understand that there is a written plea
10 agreement entered into between you and your lawyer and the
11 lawyer for government. Is that correct?

12 THE DEFENDANT: I'm sorry?

13 THE COURT: There is a written plea agreement?

14 THE DEFENDANT: Oh, yes.

15 THE COURT: I have the original of the plea agreement
16 here in front of me. It's dated on the front page January 5,
17 2016. It appears to be nine pages long.

18 I'll ask my deputy to please mark that as Court
19 Exhibit 1, and place the original in front of Mr. Pham.

20 Mr. Buckley, when we're finished discussing the plea
21 agreement, I'll ask the government to retain the original in
22 its records.

23 MR. BUCKLEY: We will do so, your Honor.

24 THE COURT: Thank you.

25 Mr. Pham, do you have the original of the plea

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1 agreement in front of you?

2 THE DEFENDANT: I have.

3 THE COURT: On the first page, is it dated January 5,
4 2016?

5 THE DEFENDANT: It is, yes.

6 THE COURT: Is it nine pages long?

7 THE DEFENDANT: It's nine pages long, yes.

8 THE COURT: On the last page, the ninth page, is that
9 your signature?

10 THE DEFENDANT: Yes, that's my signature.

11 THE COURT: You signed that? It's dated January 6,
12 2016. Is that when you signed it?

13 THE DEFENDANT: That's correct, yeah.

14 THE COURT: Did you sign it in the presence of your
15 lawyer?

16 THE DEFENDANT: Yes, I did.

17 THE COURT: Did you read the document before you
18 signed it?

19 THE DEFENDANT: We went over it, yes.

20 THE COURT: You believe you fully understood it before
21 you signed it?

22 THE DEFENDANT: Yes.

23 THE COURT: One of the features of your agreement with
24 the government is that you agreed on a guideline range that
25 applies in this case, something called the stipulated guideline

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1 range. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: In your plea agreement, the stipulated
4 guideline range is 600 months, that is 50 years' imprisonment,
5 with a mandatory minimum term of 360 months, that is 30 years'
6 imprisonment.

7 Do you understand that's the stipulated guideline
8 range?

9 THE DEFENDANT: Yes.

10 THE COURT: And the mandatory minimum we discussed
11 earlier?

12 THE DEFENDANT: Yeah.

13 THE COURT: It is important to understand that
14 agreement is binding on you, it is binding on the government.
15 It is not binding on me. As I said a moment ago, I have my own
16 obligation to determine the correct guideline range and what
17 the appropriate sentence is in your case. I'm not saying I'll
18 come up with a range different than the one you entered into
19 with the government. But if I do, I'll not let you withdraw
20 your plea, even if the range I determine is higher than the one
21 that you agreed to with the government. Do you understand
22 that?

23 THE DEFENDANT: Yes.

24 THE COURT: In your plea agreement, you waived your
25 right to appeal or otherwise challenge any sentence that is 600

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1 months or below. In other words, if I were to sentence you to
2 600 months or anything less than 600 months, you would have no
3 right to appeal or otherwise try to challenge that sentence.
4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Pham, I want to just confirm that this
7 written plea agreement that we've been discussing constitutes
8 your complete and total understanding of the entire agreement
9 between you and the government. Is that correct?

10 THE DEFENDANT: Yes.

11 THE COURT: Other than what's written in this
12 agreement, has anyone made any promise or offered you any
13 inducement to plead guilty or to sign the agreement?

14 THE DEFENDANT: No.

15 THE COURT: Has anyone threatened you or forced you to
16 plead guilty or to sign the plea agreement?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone made a promise to you as to
19 what your sentence will be?

20 THE DEFENDANT: No.

21 THE COURT: What I'll ask you to do now, Mr. Pham, is
22 to tell me in your own words what you did that makes you
23 believe that you are guilty of the three counts in the
24 indictment that you wish to plead guilty to.

25 THE DEFENDANT: Yes, Judge. For Count Two, in 2011,

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1 while in Yemen, I provided material support to a designated
2 foreign terrorist organization known as al Qaeda in the Arabian
3 Peninsula, which I knew at the time to be an organization
4 engaged in terrorist activity and terrorism. I directed --
5 which is directed against the United States. Among other
6 things, I did so by assisting in the preparation of AQAP's
7 propaganda, Inspire Magazine.

8 For Count Three, in 2011, while in Yemen, I agreed
9 with others, including a United States he was a member of AQAP.
10 Sorry. Including a United States citizen who was a member of
11 AQAP to receive military training from AQAP. In furtherance of
12 this unlawful agreement, I received training in the use and
13 assembly of a firearm from members of AQAP.

14 At the time that I entered into this agreement, I knew
15 that AQAP was an organization engaged in terrorist activity and
16 terrorism. In addition, I entered into this agreement
17 knowingly and willfully with knowledge of its unlawful
18 objectives.

19 And regarding Count Five, in 2011, while in Yemen, in
20 furtherance of the crimes charged in Counts Two and Three of
21 the indictment, I knowingly and willfully carried and used an
22 automatic Kalashnikov assault rifle which was a machine gun
23 capable of automatically firing more than one shot without
24 reloading by a single function of the trigger.

25 THE COURT: Mr. Buckley, are there any questions you'd

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1 like me to ask Mr. Pham or any proffers from the government?

2 MR. BUCKLEY: Yes, your Honor. I guess as an initial
3 matter, will the government be presented with an opportunity to
4 proffer its evidence that it would have offered at trial?

5 THE COURT: It will.

6 MR. BUCKLEY: Thank you, Judge. So in addition to
7 what Mr. Pham has allocuted to, the government also proffers
8 that it would establish that venue was proper in the Southern
9 District of New York because, after committing the crimes to
10 which the defendant just admitted, he was first brought into
11 this district as defined under Title 18, U.S. Code, Section
12 3238.

13 And in addition, the government also proffers with
14 respect to Counts Two and Three of the indictment, that al
15 Qaeda in the Arabian Peninsula, or AQAP as the defendant also
16 referred to it, is in fact a designated foreign terrorist
17 organization as defined in the statute.

18 THE COURT: I take it that there are no questions
19 you'd like me to ask, and the government agrees the factual
20 allocution is sufficient?

21 MR. BUCKLEY: So long as the defendant stipulates that
22 those two facts are true.

23 THE COURT: Yes, thank you. Ms. Sternheim, any
24 objection to the government's proffers regarding those
25 additional elements?

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1 MS. STERNHEIM: No. We concede that Mr. Pham was
2 brought into this district. I believe it was in Westchester,
3 which is the Southern District of New York. And we agree that
4 al Qaeda of the Arabian Peninsula was a designated terrorist
5 organization.

6 THE COURT: Mr. Pham, you agree with those two
7 statements of your counsel?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Thank you. I'll note, Mr. Pham, that as
10 is normal of defendants, when you made your allocution to me,
11 you were reading from a document. I want to make sure that you
12 understood everything you read.

13 THE DEFENDANT: I did.

14 THE COURT: You fully accept those words as your own?

15 THE DEFENDANT: Yes.

16 MS. STERNHEIM: Your Honor, I'd like to state for the
17 record that the allocution was discussed with Mr. Pham. It was
18 just written out for purposes of clarity today.

19 THE COURT: Thank you. I appreciate that, and as
20 indicated, that is standard procedure, so thank you.

21 Ms. Sternheim, do you know of any valid defense that
22 would prevail at trial or any reason why your client should not
23 be permitted to plead guilty?

24 MS. STERNHEIM: No, I do not.

25 THE COURT: Mr. Buckley, as promised a moment ago, I

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1 would ask that you summarize what the government's evidence
2 would be if Mr. Pham were to go to trial.

3 MR. BUCKLEY: Thank you, your Honor. At trial, the
4 government would establish the following through a combination
5 of witness testimony, electronic evidence, physical evidence,
6 documentary evidence, as well as the defendant's own
7 post-arrest statements to the FBI.

8 The government would show that in or about
9 December 2010, Pham traveled from the United Kingdom to Yemen
10 in order to join al Qaeda in the Arabian Peninsula, which I
11 will refer to as AQAP for ease of reference. The government
12 further would establish that AQAP was a foreign terrorist
13 organization designated as such by the United States Secretary
14 of State in January 2010, and remained so designated at all
15 times relevant to the indictment. The government also would
16 show that AQAP was a foreign terrorist organization that had
17 pledged allegiance to al Qaeda, and engaged in attempted
18 attacks against the United States, United States citizens, and
19 United States interests.

20 In addition, the government would show that following
21 the defendant's arrival in Yemen, in or about 2011, Pham
22 traveled to an AQAP safe house in Yemen where he joined AQAP,
23 swore an oath of loyalty to AQAP, and he did so knowing that
24 AQAP was an organization engaged in terrorist acts and
25 terrorism directed against the United States and other Western

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1 countries.

2 After joining AQAP, the government would show that
3 Pham provided various forms of material support and resources
4 to AQAP. Some examples of what the government would show at
5 trial include provision of his person to AQAP in order to
6 receive military training from and wage jihad on behalf of
7 AQAP, providing his services and expert assistance as a graphic
8 designer by assisting AQAP in the preparation of AQAP's
9 propaganda magazine, Inspire, and thereby facilitating
10 communication between AQAP in Yemen and its supporters
11 worldwide, and also supplying AQAP with electronic equipment,
12 including the defendant's camera as well as a laptop computer.

13 As part of this proof at trial, the government would
14 also introduce evidence from a cooperating witness who met with
15 Pham during his time at AQAP's safe houses. This was a
16 cooperating witness who was in Yemen at the same time as Pham,
17 and who subsequently himself pled guilty to providing material
18 support to, among others, AQAP.

19 The cooperating witness would have described, among
20 other things, the following: That Pham admitted to traveling
21 to Yemen in order to join AQAP, and admitted to in fact joining
22 AQAP. That Pham described to the cooperating witness how he
23 had received training in the use and assembly of a machine gun,
24 specifically an AK-47 assault rifle, and the cooperating
25 witness would describe that in the course of his interactions

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1 with Pham, he observed Pham carrying an AK-47 assault rifle
2 with him during his time with AQAP. And lastly, the
3 cooperating witness would describe how he and Pham exchanged
4 electronic computer files, including military training manuals
5 and other jihadist literature.

6 As part of its proof, particularly related to that
7 aspect of the cooperating witness's testimony, the government
8 would introduce evidence and testimony from forensic computer
9 examiners who would testify that forensic analysis performed on
10 both Pham's electronic media that was subsequently seized from
11 him, as well as the electronic media that was seized from the
12 cooperating witness, that there were forensic means to link
13 those various forms of media that showed that files had been
14 exchanged between the two pieces of media, and that the media
15 themselves had been linked.

16 In addition to that, your Honor, the government would
17 also proffer Pham's own Mirandized post-arrest statements to
18 the FBI which he made following his extradition to the United
19 States and formal arrest by the FBI.

20 Among other things, we would offer from Pham's own
21 statements the following: Pham admitted that he had traveled
22 to Yemen in order to join AQAP, knowing that AQAP was a foreign
23 terrorist organization engaged in terrorist activities and
24 terrorism. That Pham worked with other members of AQAP,
25 including U.S. citizens, to prepare and disseminate AQAP's

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1 propaganda magazine Inspire. That Pham admitted that he
2 received training from AQAP in the use and assembly of an AK-47
3 assault rifle, and he possessed such a rifle while in Yemen.
4 That Pham identified himself in photographs obtained from
5 AQAP's Inspire Magazine, and photographs in which he was
6 holding an AK-47 assault rifle and other photographs showing
7 him assembling an assault rifle.

8 In addition, we would offer testimony that Pham
9 admitted that he had been trained directly by a U.S. citizen
10 and senior operative of AQAP named Anwar al-Awlaki in how to
11 construct an explosive device using household or commercially
12 available materials. And Pham further admitted that al-Awlaki
13 directed Pham to return to the United Kingdom where Pham was to
14 construct an improvised explosive device, and to detonate the
15 device at the arrivals area of Heathrow International Airport,
16 specifically targeting arrivals from the United States or
17 Israel.

18 In connection with that, Pham admitted that al-Awlaki
19 provided Pham with the cash equivalent of approximately \$10,000
20 in United States currency to further that operational activity.

21 In addition to that testimony, the government would
22 also offer physical evidence seized from Pham, including a
23 round of AK-47 ammunition, his electronic media, and other
24 documents showing his travel to Yemen.

25 And as I indicated in the government's proffer, we

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1 would also establish that venue is proper in the Southern
2 District because Pham was first brought here as defined under
3 the statute.

4 THE COURT: Thank you, Mr. Buckley.

5 Mr. Pham, did you hear the prosecutor's statements
6 just now?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you do the things that he described?

9 MS. STERNHEIM: Your Honor, there are things that
10 Mr. Buckley raised that are beyond the scope of the indictment.
11 Mr. Pham accepts full responsibility for what he has been
12 charged with. I believe it would be fair for us to be able to
13 put in in our sentencing submission some things that we believe
14 bear on some of what the government stated.

15 We are not objecting to anything that supports the
16 elements of the charges to which Mr. Pham pleaded guilty. But
17 he is using Mr. Pham's own statements with regard to
18 instructions that were given to him, and there is no proof that
19 Mr. Pham did anything to follow out, as far as the allegations
20 of causing any harm in Heathrow.

21 I don't think that this is the proper forum for us to
22 be debating this, but in response, I would just like to make
23 that statement.

24 THE COURT: With respect to the aspects of the
25 government's description that go to the allocuted elements of

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1 the defense, you have no objection?

2 MS. STERNHEIM: No, we do not.

3 THE COURT: Mr. Buckley, are you comfortable with the
4 allocution?

5 MR. BUCKLEY: Yes, your Honor.

6 THE COURT: As am I. Thank you. Let me then confirm
7 with both sides, is there any reason that you know of that I
8 should not accept Mr. Pham's plea of guilty?

9 MR. BUCKLEY: Not from the government, your Honor.

10 MS. STERNHEIM: No, your Honor.

11 THE COURT: Mr. Pham, based on everything that we've
12 discussed, I am going to ask you formally how you wish to plead
13 to Counts Two, Three, and Five of the indictment, 12 CR 423.

14 THE DEFENDANT: Guilty.

15 THE COURT: Because you acknowledge that you are in
16 fact guilty as charged in the indictment, because I am
17 satisfied that you know of your rights, including your right to
18 go to trial, and that you are aware of the consequences of your
19 plea, including the sentence which may be imposed, and because
20 I find that you are knowingly and voluntarily pleading guilty,
21 I accept your guilty plea and enter a judgment of guilty on
22 Counts Two, Three, and Five of the indictment.

23 I did want to turn to the specific documents
24 pertaining to the government's notice of intent to request
25 judicial removal. There are I think three pertinent documents:

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1 The notice itself, which I'll ask my deputy to mark as Court
2 Exhibit 2; the defendant's plea statement in support of
3 judicial removal, which I'll ask be marked as Court Exhibit 3;
4 and then there is a proposed order of judicial removal which
5 we'll mark as Court Exhibit 4. I'll ask that those as well as
6 the consent preliminary order of forfeiture be placed in front
7 of Mr. Pham. We'll mark that as Court Exhibit 5.

8 Mr. Pham, I want to first focus on the three documents
9 that pertain to removal. There is the notice of intent to
10 request judicial removal, which is marked as Court Exhibit 2,
11 there is factual allegations in support of judicial removal,
12 Court Exhibit 3 -- sorry. No. Court Exhibit 3 is defendant's
13 plea statement in support of judicial removal, and then there
14 is a proposed order of judicial removal which is marked as
15 Court Exhibit 4.

16 Have you seen these documents, sir?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you had time to discuss them with
19 your attorney?

20 THE DEFENDANT: We have.

21 THE COURT: Specifically turning to what's been marked
22 as Court Exhibit 3, defendant's plea statement in support of
23 judicial removal, do you have that in front of you?

24 THE DEFENDANT: Yes.

25 THE COURT: On the last page, is that your signature?

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1 THE DEFENDANT: That's my signature.

2 THE COURT: You signed it January 6, 2016?

3 THE DEFENDANT: Yes.

4 THE COURT: You signed it in the presence of your
5 attorney?

6 THE DEFENDANT: I did.

7 THE COURT: You read it before you signed it?

8 THE DEFENDANT: Yeah.

9 THE COURT: You believe you understood it before you
10 signed it?

11 THE DEFENDANT: I did.

12 THE COURT: Turning to what's been marked as Court
13 Exhibit 5, which is a consent order of forfeiture, again, I
14 want to make sure that you have that in front of you. It is
15 marked as Court Exhibit 5.

16 THE DEFENDANT: Yeah.

17 THE COURT: Is that your signature on the last page?

18 THE DEFENDANT: It's my signature.

19 THE COURT: What date did you sign it?

20 THE DEFENDANT: The 6th of January.

21 THE COURT: Did you sign that in the presence of your
22 attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you read it before you signed it?

25 THE DEFENDANT: Yes.

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1 THE COURT: And understood it before you signed it?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Buckley, any further allocution
4 regarding the removal documents?

5 MR. BUCKLEY: No, your Honor.

6 THE COURT: Then I have the proposed order of removal
7 as well as the forfeiture order prepared for my signature.

8 Turning to the presentence report that will be
9 prepared, Mr. Pham, the one that I mentioned throughout the
10 hearing today, the probation department will want to interview
11 you in connection with that report that it will prepare.

12 Ms. Sternheim, does defense counsel wish to be present
13 for any interview in connection with the report?

14 MS. STERNHEIM: Yes, we do.

15 THE COURT: I do order that there be no interview
16 unless counsel is present. I hereby order the preparation of
17 the presentence report.

18 Mr. Pham, if you do choose to speak to the probation
19 department, please make sure that anything you say is truthful
20 and accurate. I will read the report carefully, and it is
21 important to me in deciding what sentence to impose. You and
22 your counsel have a right to examine the report and to comment
23 on it at the time of sentencing. I do urge you to read it and
24 discuss it with your lawyer before sentencing. If there are
25 any mistakes in it, point them out to Ms. Sternheim so she can

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1 bring them to my attention before sentencing.

2 We have a agreed-upon sentencing date of April 14,
3 2016, at 11 a.m. Mr. Buckley?

4 MR. BUCKLEY: Yes, your Honor.

5 THE COURT: Ms. Sternheim?

6 MS. STERNHEIM: Yes.

7 THE COURT: Sentencing is set for that date. I direct
8 the government to provide the probation officer with its
9 factual statement within seven days, and Ms. Sternheim, please
10 arrange for the defendant to be interviewed by the probation
11 department within the next two weeks.

12 I do refer counsel to my individual rules and
13 practices for criminal cases available on the court's website
14 which contains some rules regarding sentencing submissions. I
15 am going to deviate slightly from those rules. Was that your
16 request?

17 MR. BUCKLEY: Yes, your Honor.

18 THE COURT: Did you have a specific request? I was
19 going to do two weeks one week.

20 MR. BUCKLEY: That's what I discussed with defense
21 counsel, and that's what we were going to propose.

22 MS. STERNHEIM: I would also request, if I need a
23 brief reply, that I do it within three days.

24 THE COURT: All right. Let's do that. So, the
25 defense opening submission is due two weeks in advance of the

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1 sentencing, the government's submission one week, and the reply
2 by the defendant, if any is to be filed, three days in advance
3 of sentencing.

4 Counsel, is there anything further I can address at
5 this time?

6 MR. BUCKLEY: Not from the government. Thank you,
7 your Honor.

8 MS. STERNHEIM: No, thank you.

9 THE COURT: The defendant is continued to be held in
10 custody pending sentencing, and I'll see everyone on April 14.

11 Thank you. We are adjourned.

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